

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6995

BILL NUMBER: HB 1367

NOTE PREPARED: Mar 4, 2003

BILL AMENDED: Feb 25, 2003

SUBJECT: Public Nudity.

FIRST AUTHOR: Rep. Stilwell

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed - House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) The bill has the following provisions:

(A) It provides that a person commits performing sexual fondling in the presence of a minor, a Class D felony, if the person: (1) engages in sexual intercourse; (2) engages in deviate sexual conduct; or (3) touches or fondles the person's own body; in the presence of a child less than 14 years of age.

(B) It provides that a person commits public indecency, a Class A misdemeanor: (1) if the person appears nude in a public place with the intent to arouse the person's own sexual desires or the sexual desires of another person; or (2) if the person is at least 18 years of age and appears nude in a public place with the intent to be seen by a child less than 16 years of age.

(C) It makes public indecency a Class D felony if the person has a prior unrelated conviction for public indecency.

(D) It provides that a person who appears nude in a nonpublic place with the intent to be seen by persons other than invitees or occupants of that place commits indecent exposure, a Class C misdemeanor.

(E) It provides that a person who appears nude in a public place commits public nudity, a Class C misdemeanor.

(F) It makes public nudity a Class B misdemeanor if the person intends to be seen by another person.

(G) It makes public nudity a Class A misdemeanor if the person appears nude on school grounds, in a public park, or in a Department of Natural Resources-owned or -managed property with the intent to arouse the sexual desires of the person or another person.

Effective Date: July 1, 2003.

Explanation of State Expenditures: (Revised) *Performing Sexual Conduct in the Presence of a Minor:*

Under current law, there is no criminal penalty for an adult to engage in either sexual intercourse or sexual deviate conduct in the presence of a child with the intent to arouse the sexual desires of the child or the adult performing the act. As amended, this bill would make performing these acts in the presence of a child less than 16 years of age a Class D felony.

Public Indecency: Under current law, public indecency is a Class A misdemeanor, but it is enhanced to a Class D felony if (1) the offender intends to arouse sexual desires in a public place where a child less than 16 years old is present, (2) the offense takes place in or on school property and the offender has a prior conviction, or (3) the offense takes place on Department of Natural Resources (DNR) property and the offender has a prior conviction.

Under the bill, the Class D felony would apply to an offender who has a prior unrelated conviction. The bill would establish a Class A misdemeanor for appearing in a state of nudity to arouse sexual desires, or appearing in a state of nudity with the intent to be seen by a child less than 16 years of age, if the offender is at least 18 years old. There are no data available to indicate if additional offenders would be convicted of these offenses, given the changes in definitions. In FY 2001, there were 2 people committed to Department of Correction (DOC) facilities for Class D felony public indecency.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: (Revised) *Public Indecency:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000, and the maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Indecent Exposure and Public Nudity: The bill adds to the definition of Class C misdemeanor indecent exposure, appearing in a state of nudity. Also, the bill would create a new Class B misdemeanor for knowingly or intentionally appearing in a state of nudity in a public place and a Class A misdemeanor if the person appears in a state of nudity on school property, a public park, or on DNR property.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fines for misdemeanors are as follows:

- Class C misdemeanor is \$500.
- Class B misdemeanor is \$1,000.
- Class A misdemeanor is \$5,000.

Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be

deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings for a Class D felony, local expenditures for jail operations may increase. Additionally, a Class A misdemeanor is punishable by up to one year in jail, a Class B misdemeanor is punishable by up to 180 days in jail, and a Class C misdemeanor is punishable by up to 60 days in jail. The average cost per day is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction.

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